

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

FILED

JAN 18 2008

UNITED STATES OF AMERICA

VENUE: San Francisco
RICHARD W. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

V.

CRIMINAL COMPLAINT

ENRIQUE CABRERA-LUVIANO
a/k/a ENRIQUE CABRERA

CASE NUMBER: 3 - 08 - 7002

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about January 15, 2008 in San Francisco County, in the Northern District of California defendant(s) did,

OFFENSE: ENRIQUE CABRERA-LUVIANO (a/k/a ENRIQUE CABRERA), an alien, after having been removed, excluded, and deported from the United States, was thereafter found in the United States without having obtained the express consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission into the United States, in violation of Title 8 United States Code, Section(s) 1326.

I further state that I am a(n) Deportation Officer and that this complaint is based on the following facts:
Official Title

SEE ATTACHED AFFIDAVIT IN SUPPORT OF THIS COMPLAINT

PENALTIES: Imprisonment for not more than 20 years, a fine of not more than \$250,000.00, a \$100.00 dollar special assessment, and 3 years supervised release.

APPROVED AS TO FORM:

ASSISTANT UNITED STATES ATTORNEY

Continued on the attached sheet and made a part hereof: Yes NoWarrant of Arrest Requested: Yes NoBail Amount: NO BAIL

Signature of Complainant

Sworn to before me and subscribed in my presence,

Date Jan 18, 2008 at San Francisco, California
City and State

Honorable Elizabeth D. Laporte
United States Magistrate Judge

Name & Title of Judicial Officer

Elizabeth D. Laporte
Signature of Judicial Officer

STATE AND NORTHERN DISTRICT OF CALIFORNIA)
CITY AND COUNTY OF SAN FRANCISCO) ss, AFFIDAVIT
)

I, Cesar J. Lopez, Deportation Officer, U.S. Immigration and Customs Enforcement (ICE), being duly sworn, depose and state:

I. INTRODUCTION AND PURPOSE OF AFFIDAVIT

1. This affidavit is submitted in support of a criminal complaint against ENRIQUE CABRERA-LUVIANO, a/k/a ENRIQUE CABRERA, for violating 8 U.S.C. § 1326. The facts set forth in this Affidavit are based on my review of CABRERA-LUVIANO'S official Immigration file (No. A79 626 136), my personal observations, my training and experience, and where noted, information related to me by other law enforcement officials. However, the facts set forth in this Affidavit are not all facts related to CABRERA-LUVIANO that I know.

II. AGENT'S BACKGROUND AND EXPERTISE

2. I have been a Deportation Officer with the U. S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), formerly the United States Department of Justice (DOJ), Immigration and Naturalization Service (INS), for approximately 14 years. I am currently assigned to ICE's San Francisco, California office, and I am responsible for enforcing federal criminal statutes involving criminal aliens who reenter the United States illegally.

III. APPLICABLE LAW

3. Title 8 U.S.C. § 1326 provides criminal penalties for "any alien who . . . has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act"

IV. FACTS ESTABLISHING PROBABLE CAUSE

4. ENRIQUE CABRERA-LUVIANO, a/k/a ENRIQUE CABRERA is a 24 year-old male who is a native and citizen of Mexico. CABRERA-LUVIANO was deported from the United States to Mexico on November 27, 2002 and December 11, 2003. CABRERA-LUVIANO last entered the United States illegally on an unknown date in February 2004 by voluntarily crossing into California through the international border with Mexico by foot. CABRERA-LUVIANO

knowingly remained in the United States without first having obtained the consent to reapply for admission from the Attorney General of the United States or the United States Secretary of Homeland Security.

5. The official Immigration file for CABRERA-LUVIANO contains two executed Warrants of Removal. The Warrants of Removal are dated November 27, 2002 and December 11, 2003, the dates that CABRERA-LUVIANO was deported from the United States to Mexico.

6. On or about January 15, 2008, an ICE agent encountered CABRERA-LUVIANO pursuant to his release from the San Francisco County Jail in San Francisco, California on unrelated charges. CABRERA-LUVIANO stated that his name was Enrique Cabrera-Luviano. Subsequently, the agent lodged an ICE detainer against him.

7. On January 15, 2008, Immigration Enforcement Agent Darin Momrow interviewed CABRERA-LUVIANO at the ICE office in San Francisco, California. After CABRERA-LUVIANO was advised of his Miranda rights and the right to speak with the consular or diplomatic officers of his country of citizenship, he admitted that his true name was ENRIQUE ALEJANDRO CABRERA-LUVIANO. CABRERA-LUVIANO admitted that he was a citizen and national of Mexico and that he had been previously deported from the United States. He also admitted that he illegally reentered the United States on an unknown date in February 2004.

8. On January 15, 2008, a full set of rolled fingerprints belonging to CABRERA-LUVIANO was submitted the Automated Fingerprint Identification Center (“AFIS”), for verification of the identity. The fingerprint examiner positively identified the fingerprint as belonging to the same CABRERA-LUVIANO who had previously been removed from the United States as referenced in paragraph 4.

9. There is no indication in ICE’s official files that CABRERA-LUVIANO has applied for or been granted the requisite permission to reenter the United States from either the Attorney General of the United States or the Secretary of Homeland Security.

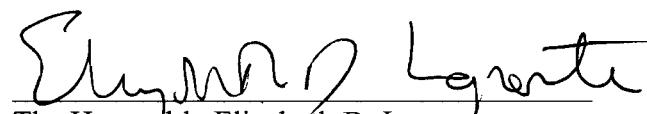
V. CONCLUSION

10. On the basis of the above information, I submit that probable cause exists to believe that ENRIQUE CABRERA-LUVIANO, a/k/a ENRIQUE CABRERA, illegally reentered the United States following deportation, in violation of 8 U.S.C. § 1326.



Cesar J. Lopez
Deportation Officer
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
San Francisco, California

Subscribed and sworn to before me this 18 day of January, 2008.



The Honorable Elizabeth D. Laporte
United States Magistrate Judge
Northern District of California
San Francisco, California